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In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 326

DANIEL E. WILLMORE

Petitioner

vs.

PAMELA H. WILLMORE

Respondent

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

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333-3539 Hayward-Court Brief Prtg. Co., Mpls., Minn. 55415 333-3530

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JURISDICTION

The Minnesota Supreme Court decision in *Willmore* v. *Willmore,* — Minn. —, — N.W. (2d) —, filed April 15, 1966 (Appendix C, *Petition,* pp. 9a-16a) lacks finality (see Argument I, *infra,* pp. 6-9). Therefore, the jurisdiction of this Court is improperly invoked by Petitioner under Title 28 U.S.C. Section 1257(3).

QUESTIONS PRESENTED

1. Is there sufficient "finality" to found jurisdiction in this Court where the decision appealed from was that a gen-

uine issue as to material fact existed and thereby a trial of such issue was required and summary judgment was not proper?

2. In a decision of a state court involving escape of process, evasion of jurisdiction, surreptitious and unlawful conduct in seizure of custody and removal of children from such state, does a conflict with the decision of this Court in *May* v. *Anderson* arise?

STATEMENT OF THE CASE

On November 7, 1964, Respondent, with the infant children of parties, left the Washington D. C. home of parties because of the Petitioner's sadistic tendencies, acts of violence, and threats of violence, and took refuge in the home of the mother of Respondent, at St. Louis Park, Minnesota. (Appendix B, *infra,* p. 3a; Appendix G, *infra,* p. 19a, and Appendix C, *Petition,* p. 11a.) The removal from Washington, D. C. was effected without the use of force or violence and with Petitioner's advance knowledge of the intended destination, but without his consent. (Appendix B, *infra,* p. 3a.) Immediately upon their arrival in Minnesota, Respondent telephoned Petitioner to confirm their arrival and to confirm their whereabouts. (Appendix B, *infra,* p. 3a and Appendix G, *infra,* pp. 19a-20a.) Shortly thereafter, Respondent determined to make Minnesota her home and that of the children and so advised Petitioner. (Appendix B, *infra,* pp. 3a-4a.)

The Petitioner was aware that there was no telephone at the home of Respondent's mother, and, Petitioner by telegram (Appendix B, *infra,* p. 4a) requested Respondent to telephone him at 5:00 o'clock p.m. December 21, 1964, in care of a specific Washington, D. C., telephone

number. (Appendix B, *infra*, p. 7a.) At 5:00 o'clock p. m. December 21, 1964 Respondent was away from the home attempting to make the requested telephone call. Petitioner and two of his brothers forced their way into the Respondent's mother's home, assaulted Respondent's mother, assaulted and battered Respondent's step-father requiring him to have medical attention the following day, and meanwhile using profanity, seized the infant children of parties and removed them from the home of Respondent's mother. (Appendix B, *infra*, pp. 4a-5a; Appendix C, *infra*, p. 11a; Appendix D, *infra*, p. 13a; and Appendix E, *infra* p. 15a.) At the time of the abduction, the children were seven months of age and nineteen months of age (Appendix D, *Petition*, p. 17a). By telegram of May 23, 1964 from Pocatello, Idaho, Petitioner advised Respondent that he had fled Minnesota because the police had been called, and, that the parties' Washington house had been "given up". (Appendix B, *infra*, p. 7a.) Except for this telegram from Pocatello, Idaho, except for a letter post marked January 6, 1965, the Panama Canal Zone (Appendix B, *infra*, pp. 8a-9a) and except for the affidavit of September 29, 1965 by one of Petitioner's attorneys which declared the children to have been in Pocatello, Idaho until July of 1965, (Appendix F, *infra*, p. 17a), and except for an affidavit of Petitioner stating that the children were in the "Washington D. C. area", Respondent, the mother, has not seen her infant children or had any knowledge of their condition, whereabouts, or welfare since December 21, 1964.

After the violent abduction, Respondent made vigorous search for the Petitioner and for her children (Appendix G, *infra*, pp. 29a-30a) but Respondent was unable to find

them. (Appendix A, *infra,* pp. 1a-2a; Appendix B, *infra,* pp. 3a-5a; Appendix G, *infra,* p. 19a.) Respondent attempted to find Petitioner or the children through Petitioner's attorney but was given no such information (Appendix B, *infra,* p. 4a.) The Petitioner's attorney did submit "reconciliation" terms, *viz.* the adoption of the Respondent's son by a prior marriage and "an irrevocable guarantee [by Respondent] that she would not in the future take any of the children from [Petitioner] or attempt to deprive him of the children." (Appendix B, *infra,* p. 10a.) The day following such reply, Respondent made application to the Minnesota District Court for its order authorizing service by publication as provided by the Minnesota Statute and grounded upon her diligent search for, and inability to locate, Petitioner. (Appendix A, *infra,* p. 1a.) The order was granted and the publication was made together with the mailing of copies to the Petitioner's last known address and to the Petitioner's attorney.

About May 21, 1965, the Petitioner brought a motion scheduled for a hearing June 4, 1965 asking the Court's order dismissing the action upon various claims of lack of jurisdiction. (Appendix E, *Petition,* p. 20a.) This motion was converted to one for partial summary judgment (Appendix F, *Petition,* p. 23a) upon the stipulation of respective counsel (Appendix F, *Petition,* p. 22a). The Minnesota District Court, by its order with attached memorandum, denied the motion as to the question of custody of the children of parties. (Appendix A, *Petition,* p. 2a.) Petitioner filed petition for re-hearing, which the Minnesota District Court denied by its order and memorandum of November 15, 1965. (Appendix D, *Petition,* p. 7a.) The Petitioner appealed from said orders to the Minnesota Su-

preme Court. The Minnesota Supreme Court entered its decision April 15, 1966 affirming the orders of the Minnesota District Court. (Appendix C, *Petition,* p. 9a.) The major point in the opinion was that the proceeding under review was only on a motion for summary judgment and that the existence of any genuine issue as to any material fact would require the denial of such motion. The Court's opinion further stated that issues of fact remained to be determined which issues of necessity had to be left for trial and that review by the Minnesota Supreme Court was proper only under presentation of the merits on appeal, after trial, and with record and proper findings of fact of the trial Court. (Appendix C, *Petition,* p. 16a.)

REASONS FOR DENYING THE WRIT

Introduction

On December 21, 1964, the Petitioner entered the State of Minnesota and by his forcible, violent, surreptitious and unlawful acts, seized the two infant children of parties from the custody of their mother, the Respondent. (Appendices B, C, D, and E, *infra,* pp. 3a-15a.) The children were then seven months and nineteen months of age. Since that time Petitioner has concealed their whereabouts from Respondent (Appendix A, *infra,* pp. 1a-2a), and despite specific judicial inquiry, by the Minnesota Courts (Appendix A, *Petition,* pp. 5a-6a.) Petitioner has traveled about to prevent discovery of their whereabouts and has been in Pocatello, Idaho (Appendix B, *infra,* p. 4a), the Panama Canal Zone (Appendix B, *infra,* pp. 4a, 9a), and the "Washington D. C. Area."

Petitioner has unsuccessfully sought the assistance of the Minnesota District Court and the Minnesota Supreme

Court, asking them to rule against any possibility of Minnesota child custody jurisdiction in the circumstances. Petitioner then asked of the Minnesota Supreme Court a stay of remittitur which was granted, preventing further Minnesota District Court proceedings toward determining the jurisdictional facts, and the facts relating to parties' respective merits toward custody.

Contemporaneously, Petitioner seeks the assistance of this Court by his petition for writ of certiorari to review a Minnesota Supreme Court decision which does not have the finality required by Title 28 U.S.C. Section 1257 (see Argument I, *infra*, pp. 6-9), and which is not in conflict with any decision of this Court under Rule 19, Supreme Court Rules (see Argument II, *infra*, pp. 9-12). Also, Petitioner asks this Court to declare a rule which would reward unlawful and surreptitious conduct and overrule a state court decision which tends to support a salutary rule of law (see Argument III, *infra*, pp. 12-13).

Argument I.

The Jurisdictional Requirement of Finality under 28 U.S.C. 1257 Is Not Met for among other Things, Genuine Issues of Material Fact Remain To Be Determined upon Hearing of Evidence by the Trial Court.

Neither a separate maintenance proceeding nor a child custody hearing has been held in the Minnesota District Court, and neither a separation decree nor a child custody decree has been issued. Before such can issue, hearing must be had, and Respondent must present evidence showing her entitlement to relief upon her grounds and upon the status of jurisdiction, and as to child custody, upon her merit and the children's best interest. See *Minn. St.* 518.17;

see also *Currier* v. *Currier,* 271 Minn. 369, 136 N.W. (2d) 55, and *Anderson* v. *Anderson,* 260 Minn. 226, 109 N. W. (2d) 571.

Aside from the indeterminate state of the separate maintenance and child custody issues on the *merits* (see *Meagher* v. *Minnesota Threshing Mfg. Co.,* 145 U.S. 608, 12 Supreme Court 876), the Minnesota Supreme Court decision lacks finality for another reason. Petitioner moved the Minnesota District Court for summary judgment; the motion was based primarily upon an asserted lack of jurisdiction. (Appendix E, *Petition,* p. 20a.) Partial summary judgment was entered on certain claims of Respondent which are not here relevant; however, summary judgment was denied as to Respondent's claim for child custody. (Appendix A, *Petition,* pp. 1a-6a.) The Minnesota Supreme Court affirmed the District Court determination. (Appendix C, *Petition,* pp. 9a-16a.)

Both the Minnesota District Court and the Minnesota Supreme Court indicated that there are "genuine issue[s] of material [inter alia, jurisdictional] fact" yet to be decided. (Appendix A, *Petition,* p. 2a; Appendix C, *Petition,* pp. 10a-12a and 15a-16a.) The only "fact" to be "found" by the trial court and the Minnesota Supreme Court is that there are genuine issues of material fact. Respondent admits, and the Petitioner and the Minnesota District and Supreme Courts must concede, that while there are some uncontroverted jurisdictional facts, there are also controverted jurisdictional facts.

> "The function of the court on a motion for summary judgment is not to resolve issues of fact but to determine whether they exist." *Anderson* v. *Mikel Drilling Co.,* 257 Minn. 487, 494, 102 N.W.(2d) 293, 299.

Due process requires that Respondent—and Petitioner—be afforded "full hearing" which requires hearing of evidence on material facts in controversy, and in addition weighing and evaluating all facts in relation to each other.

Under Minnesota law, summary judgment can be granted only where there are no genuine issues of law or of material fact. Rule 56.03, Minnesota Rules of Civil Procedure. The District Court orders and the Minnesota Supreme Court decision constituted a determination that there are genuine issues of material fact, including jurisdictional fact. (Appendix C, *Petition*, pp. 15a-16a.) It is clear that the Petitioner could enter the Minnesota District Court and/or the Minnesota Supreme Court and further litigate either child custody jurisdiction or exercise of child custody jurisdiction—or even the issue of child custody itself to a limited extent—without waiving his objections to child custody jurisdiction. *Anderson* v. *Mikel Drilling Co., supra,* 257 Minn. 487, 102 N.W. (2d) 293. See *Meagher* v. *Minnesota Thresher Mfg. Co.,* 145 U.S. 608, 12 S. Ct. 876; Cf. *Pope* v. *Atlantic Coast Line Ry.,* 345 U.S. 379, 73 S. Ct. 749.

A determination by this Court that the Minnesota Supreme Court decision is final would deprive Respondent of the opportunity to prove certain essential jurisdictional facts by a full evidentiary hearing in the Minnesota District Court. (See Argument II, *infra,* pp. 9-12.) Cf. *Construction Laborers* v. *Curry,* 371 U.S. 542, 83 S. Ct. 531. If such a determination of finality is made by this Court, then fairness to the Respondent would require the application of two rules by this Court: (1) upon a motion for summary judgment, the evidence must be viewed in a light most favorable to the nonmoving party (Respondent); see *McCuller* v. *Workson,* 248 Minn. 44, 78 N.W. (2d) 340;

and (2) upon an appellate review, the evidence must be viewed in a light most favorable to the party prevailing below (Respondent); see *Pierce* v. *Grand Army of the Republic*, 220 Minn. 552, 20 N.W.(2d) 302.

In summary, finality is required by 28 U.S.C. 1257. Respondent must establish her right to a separation decree, and must show her fitness for, and service of the infant children's best interest by, a decree awarding her custody. Respondent must litigate certain essential jurisdictional facts, and the opportunity to establish these facts is vitally important to her. Petitioner has the option to further litigate either the issue of child custody jurisdiction or the issue of the exercise of child custody jurisdiction, or the issue of child custody (to a limited extent) or all three. In the event that this Court determines that the Minnesota Supreme Court decision is a final decision, then the evidence must be viewed in a light most favorable to Respondent.

Argument II.

There Is No Conflict between the Decision of the Minnesota Supreme Court and Decisions of This Court under Rule 19, Supreme Court Rules.

The Petitioner claims that there is a conflict between the Minnesota Supreme Court decision and the decision of this Court in *May* v. *Anderson*, 345 U.S. 528, 73 S. Ct. 840, within the meaning of Rule 19, Supreme Court Rules. These decisions are distinguishable on the facts, the procedure, and the law.

In the *May* case, the Respondent (father) secured a Wisconsin decree which awarded him custody of children who were domiciled in Wisconsin but present in Ohio with the Petitioner (mother) at the time of the Wisconsin custody

suit commencement, custody hearing and custody decree. In Ohio habeas corpus proceedings, the Ohio Supreme Court affirmed a lower Ohio Court determination that the Wisconsin decree must be enforced without hearing or modification under the full faith and credit clause of the federal constitution. This Court reversed the Ohio Supreme Court.

The differences between this case and the *May* case are many, and are markedly distinct.

(1) In the *May* case, the non-resident parent secured the children by mutual consent and lawful means; however, in this case, the non-resident parent (Petitioner) secured the children by a surreptitious act coupled with unlawful and violent acts. (Appendices B, C, D, and E, *infra*, pp. 3a-15a.)

(2) In the *May* case, the mutual consent contemplated the removal of the children from Wisconsin and the removal was straight-forward; however, in this case, the Petitioner fled from the State of Minnesota. (Appendix B, *infra*, p. 4a.)

(3) In the *May* case, the deprived parent knew the whereabouts of the other parent and of the children; however, in this case, the Petitioner has acted to evade process and to escape jurisdiction and has concealed his whereabouts and the whereabouts of the children from the Respondent. (Appendices A, B, *infra*, pp. 1a, 3a.) Further this concealment was successful against Respondent's anguished and extensive search. (Appendix G, *infra*, pp. 19a, 29a-30a.) Further this concealment has continued despite specific inquiry of the Minnesota District

Court. (Appendices A, B, *Petition*, pp. 3a, 8a.) The Respondent still does not know the whereabouts of the children or of Petitioner.

(4) In the *May* case, the deprived parent secured a judicial determination and award as to custody in his state of domicile, Wisconsin; in this case *no* judicial determination or award has been made.

(5) In the *May* case, the deprived parent took the decree of his domiciliary state into another state for enforcement; in this case no application has been made to the courts of any state other than Minnesota.

(6) In the *May* case, the majority and the concurring opinions indicate that the decision of this Court therein rested solely and exclusively on the full faith and credit clause. It is clear that the full faith and credit clause applies only to states in which enforcement of foreign judgments or decrees, *inter alia*, is sought: on its face, the full faith and credit clause does not apply to the state in which the judgment or decree originates. In this case, Minnesota has not yet issued a custody decree. But even if a custody decree had issued, then *May* would still be basically distinguishable because the full faith and credit clause upon which *May* rests could not apply to Minnesota, the issuing state.

In the *May* case, this Court ruled that Ohio was prohibited from giving full faith and credit to the Wisconsin decree (see Majority opinion, per Mr. Justice Burton, 345 U.S. at page 528); *or*, that Ohio misconceived the effect of the

full faith and credit clause and had the option to give effect to the Wisconsin decree (see Concurring Opinion of Mr. Justice Frankfurter, 345 U.S. at page 535) without hearing or modification. Mr. Justice Burton, speaking for the Majority, pointed out, (345 U.S. at pages 534-35):

> "The instant case does not present the special considerations that arise where a parent, with or without minor children, leaves a jurisdiction for the purpose of escaping process or otherwise evading jurisdiction, and we do not have here the considerations that arise when children are unlawfully and surreptitiously taken by one parent from the other."

Obviously, this Court expressly reserved from the decision of *May* v. *Anderson,* because that quotation lists each of the special considerations existing in this case.

Argument III.

The Special Circumstances Mentioned in May v. Anderson and Existing in This Case Require Formulation of an Appropriate Rule of Law under the Appropriate, Traditional, Deliberate Judicial Procedures.

Respondent concedes that *May* v. *Anderson* does have Fourteenth Amendment implication; however, such implications clearly favor Respondent in her quest to exercise her rights *and the rights of the infant children* by a judicial determination of custody based upon considerations of the children's welfare and best interests. Respondent recognizes that *State ex rel. Glasier* v. *Glasier,* 272 Minn. 62, 137 N.W.(2d) 549, directs itself to the issue of domicile of children; however, the holding of the Minnesota Supreme Court in that case clearly favors Respondent and was cor-

rectly relied upon by the Minnesota Supreme Court in its decision favoring Respondent in the present case.

Respondent has developed a proposed rule of law which should be squarely accepted or rejected by the Minnesota District Court and the Minnesota Supreme Court on the basis of a properly and completely developed record. A reading of the Minnesota District Court orders (Appendix A, *Petition*, pp. 1a-9a) and the Minnesota Supreme Court decision (Appendix C, *Petition*, pp. 9a-16a) readily reveal that these Minnesota courts deferred adoption and application of a fully and clearly stated rule of law until such time as the record warrants said adoption and application. Respondent should be afforded the opportunity to obtain an acceptance or rejection of her proposed rule of law by these Minnesota courts.

Stated in summary fashion, Respondent's proposed rule of law is as follows:

> Upon a justified, reasonable removal of minor children by one parent from one jurisdiction to another, with intent to make the subsequent jurisdiction the domicile, such subsequent jurisdiction becomes the domicile of the children, and the subsequent unjustified or unreasonable removal by the other parent will not terminate jurisdiction.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

RAYMOND C. PLOETZ
444 Second Street
Excelsior, Minnesota 55331
Attorney for Respondent

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APPENDIX A

State of Minnesota, County of Hennepin
District Court, Fourth Judicial District

Pamela H. Willmore, 4155 Webster Avenue, St. Louis Park, Minnesota, *Plaintiff*,

v.

Daniel E. Willmore, Address Unknown, *Defendant*.

AFFIDAVIT

State of Minnesota

ss.

County of Hennepin

PAMELA H. WILLMORE, being first duly sworn, deposes and says that she is the plaintiff in the above entitled action; that said action is one for a decree of separate maintenance; that plaintiff desires that said action be commenced, but defendant, to the best of plaintiff's information and belief is not a resident of the State of Minnesota, cannot be found herein, and his last known residence address was

403 Seward Square
Washington, D.C.;

Affiant is informed by the landlord of the Washington, D.C. premises, and affiant believes, that defendant vacated such premises late in December of 1964; affiant received telegram from defendant, dated December 23, 1964, from Pocatello, Idaho, which telegram advised affi-

ant that defendant had vacated the Washington premises; your affiant's attempt to communicate at Pocatello, Idaho with defendant failed for lack of specific address and lack of company records at Pocatello of appropriate address; your affiant received a letter from defendant postmarked January 6, 1965, Panama Canal Zone;

Your affiant knows of no address at which, or through which, defendant can be reached;

Affiant makes this affidavit for the purpose of securing an order of the above named Court ordering service by publication pursuant to Minnesota Statute 518.11.

/s/ PAMELA H. WILLMORE

Subscribed and sworn to before me
this 27th day of March, 1965.

/s/ RAYMOND C. PLOETZ
Notary Public

APPENDIX B

State of Minnesota, County of Hennepin
District Court, Fourth Judicial District

Pamela H. Willmore, *Plaintiff*,

v.

Daniel E. Willmore, *Defendant*.

AFFIDAVIT

File No. 612151

State of Minnesota

ss.

County of Hennepin

PAMELA H. WILLMORE, being first duly sworn, deposes and says that she is plaintiff in the above entitled action;

That on November 7, 1964, your affiant took the minor children of parties, Ellis Daniel Willmore, now age two years, and Christopher Edward Nelson Willmore, now age one year, from the Washington, D.C. home of parties with her to the St. Louis Park, Minnesota home of affiant's mother; that although defendant opposed and would not consent to said removal, the same was accomplished without the use of force or violence and with defendant's advance knowledge of their intended destination and with subsequent confirmation to defendant of their arrival and whereabouts;

That shortly thereafter, affiant determined to make Min-

nesota her home and that of the children and so advised defendant;

Thereafter, defendant by telegram requested affiant to telephone him on a specified day and at a specified time; defendant was aware that there was no telephone in the home of affiant's mother (Exhibit A);

While affiant was away from the home on said day and time, according to her information which she verily believes, defendant and two of his brothers appeared at affiant's mother's home and forcibly restrained affiant's mother and step-father while one brother removed the two children to a truck and away from the premises; after such brother had left, defendant and the other brother released affiant's parents and left in an automobile; thereafter, affiant is informed and believes that defendant and his two brothers with the two children were seen the next day at a Milwaukee, Wisconsin, motel about to depart to the Milwaukee airport;

Thereafter, affiant received the telegram, Exhibit B, from defendant bearing origin address of Pocatello, Idaho, and dated December 23, 1964, and subsequently received the letter, Exhibit C, postmarked Panama Canal Zone and postmark dated January 6, 1965; in response to affiant's inquiries of all persons known to be associated with defendant, specifically including defendant's brothers and defendant's attorney, affiant has received no word of the whereabouts of the children and has received no information concerning their care, condition or welfare save the letter of defendant's attorney, Exhibit D, and save aforesaid Exhibits B and C;

Affiant is understandable distraught with no informa-

tion of the children's whereabouts for 161 days since their forcible abduction by defendant and his brothers;

Defendant has told affiant that he is a George Washington University law school graduate, that he was an officer in the paratroop corps of the U.S. Army; defendant is 33 years of age, is physically fit, exercises regularly, weighs 180 pounds, is 5'10" tall and claims knowledge of karate and judo;

Your affiant makes this affidavit in response to the hearsay affidavit of Mr. Ira C. Peterson, Jr., for the purposes of demonstrating to the court the true circumstances of affiant's and the children's arrival in Minnesota, the establishment of their domicile in Minnesota, the forcible abduction from Minnesota, the extortive nature of defendant's reconciliation proposal (Exhibit D), and defendant's unnecessary and sadistic concealment of the whereabouts and circumstances of the children, aged one and two years.

/s/ PAMELA H. WILLMORE

Subscribed and sworn to before me
this 2nd day of June, 1965.

/s/ RAYMOND C. PLOETZ
Notary Public

My commission expires April 27, 1968.

Exhibit B

CLASS OF SERVICE
This is a fast message unless its deferred character is indicated by the proper symbol.

WESTERN UNION
TELEGRAM

W. P. MARSHALL, PRESIDENT

SYMBOLS
DL = Day Letter
NL = Night Letter
LT = International Letter Telegram

The filing time shown in the date line on domestic telegrams is LOCAL TIME at point of origin. Time of receipt is LOCAL TIME at point of destination

206P EST DEC 20 64 MA273
RA028 R AXA092 PD TDAX MANASSAS VIR 20 220P EST
MISS PAMALA WILLMORE
CARE MRS MARJORIE SHANEYFELT 4355 WEBSTER AVE ST LOUIS PARK
MINN
PLEASE CALL ME COLLECT AT 5 OCLOCK YOUR TIME MONDAY AFTER NOON
DECEMBER 21ST AT JERRY'S PLACE PHONE TOS 368-3337
DAN
(28).

No.		To
By	At	To Be

Exhibit A

WESTERN UNION
TELEGRAM

W. P. MARSHALL, PRESIDENT

SYMBOLS
DL = Day Letter
NL = Night Letter
LT = International Letter Telegram

The filing time shown in the date line on domestic telegrams is LOCAL TIME at point of origin. Time of receipt is LOCAL TIME at point of destination

DEC 23 AM 6 2E

109A EST DEC 23 64 MA032 PRA331
PR PKA354 NL PD POCATELLO IDA 22
MRS WILLMORE
4355 WEBSTER MPLS
BALLING THE POLICE MADE IT IMPOSSIBLE TO STAY TO TALK TO YOU.
ILL GET IN TOUCH WITH YOU IN A COUPLE OF DAYS. I HAVE GIVEN
UP THE WASHINGTON HOUSE. AND YOUR THINGS ARE ON THE WAY TO
MINNESOTA. THE CHILDREN ARE FINE
DAN.

My brother in D.C. called my step-father and said the house was empty but that, as far as he could tell, the furniture is still there.

No.		To
By	At	To Be

Exhibit B

Exhibit C

Dear Pam,

The children are fine. Things are going to be hard for us for awhile, but we'll get by. Dive stretched the bank loan out over a year and your name is no longer on it. We'll be paying the other debts a little at a time.

I packed most of yours and Kevin's things before I left and had someone send them to you. They're being sent by moving van, so I guess they'll be along pretty soon. Besides yours and Kevin's clothes and Kevin's toys and your personal things, I don't know exactly what has been sent. But everything else was sold and will go on your doctor bill.

It's a sad thing that a family should be brought to this state. I know you miss the children. As for me, I miss Kevin, my business (I had several thousand dollars worth of contracts starting in January), any possibility of finishing my thesis (and the time already spent which is now lost). I miss my teaching, any hope of a political career, and a chance to work in the library.

I came very close to taking Kevin with me when I left. I want to see him again. I'll remember your statement that "You'll never see Kevin again." Think

Exhibit C

Exhibit C (continued)

it over. I've given up everything I can give up, except my Children. These you can not take. Think it over. In the meantime, I still will not give you a divorce.

Dan

Exhibit C

10a

Exhibit D

SAMUEL J. L'HOMMEDIEU, JR.
ATTORNEY AT LAW
1627 K STREET, NORTHWEST
WASHINGTON, D. C. 20006

SAMUEL J. L'HOMMEDIEU, JR.
ROBERT G. KNECHTEL

TELEPHONE
393-7552

March 26, 1965

Raymond C. Ploetz, Esq.
444 Second Street
Excelsior, Minnesota 55331

Re: Mrs. Pam Willmore
Your File No. 1572-1

Dear Mr. Ploetz:

This is in further reference to your letter of March 8, 1965. Since its receipt, I have received information that my client will be willing to settle this matter on certain terms. First of all, my client has always been willing to reconcile with his wife and I am informed that he is willing to reconcile at this time. However, before he would consider the questions of reconciliation the terms of reconciliation are:

1. Adoption of Kevin
2. There be an irrevocable guarantee on the part of the Wife that she will not in the future take any of the children from him and attempt to deprive him of the children.

If the wife is interested in the above terms, kindly advise and we can investigate the details at that time.

I am also informed that the children are fine in all respects and furthermore I am informed that they are being well cared for.

Very truly yours,

Samuel J. L'Hommedieu, Jr.

SJL'H:vp

Exhibit D

APPENDIX C

State of Minnesota, County of Hennepin
District Court, Fourth Judicial District

Pamela H. Willmore, *Plaintiff*,

v.

Daniel E. Willmore, *Defendant*.

AFFIDAVIT

File No. 612151

State of Minnesota

ss.

County of Hennepin

MARJORIE SHANEYFELT, being first duly sworn, deposes and says that she is the mother of plaintiff in the above entitled action;

That on December 21, 1964, at 5:o'clock P.M., while plaintiff was momentarily away from the affiant's home, the defendant, Daniel E. Willmore, and two brothers, appeared at your affiant's home; the defendant having a box in his hand, shoved your affiant's husband with the box and knocking him down and forcing his way into the premises; thereupon the defendant said, "God damn you Bill, I'm after my children";

My husband, William Shaneyfelt, called to me to "get the police, it's Daniel"; Daniel called to his brother Jerry, "grab her"; Jerry shoved me into a chair and told me "don't move or you'll get hurt";

Meanwhile, the defendant had my husband pinned against the sofa and was squeezing him; Jerry, who was standing guard over me said to defendant: "careful, you will kill him"; then the defendant yelled: "Gaard, go upstairs and get the kids"; Gaard then went, got the kids, took them out to a truck in back, and left; thereafter, defendant Jerry left the premises and drove off in an automobile.

Within a matter of five or ten minutes, plaintiff returned home; I have had no word of the condition or whereabouts of the children since.

/s/ MARJORIE SHANEYFELT

Subscribed and sworn to before me
this 2nd day of June, 1965.

/s/ RAYMOND C. PLOETZ
Notary Public

My commission expires April 27, 1968.

APPENDIX D

State of Minnesota, County of Hennepin
District Court, Fourth Judicial District

Pamela H. Willmore, *Plaintiff*,

v.

Daniel E. Willmore, *Defendant*.

AFFIDAVIT

File No. 612151

State of Minnesota

ss.

County of Hennepin

WILLIAM SHANEYFELT, being first duly sworn, deposes and says that he is stepfather of plaintiff of above entitled action;

That on December 21, 1964, about 5 o'clock P.M., your affiant answered the door of his and his wife's home; he was met at the door by defendant, Daniel Willmore, who had a box in his hands; defendant forced his way into the premises knocking me down in the process; the defendant said "God damn you Bill, I'm after my children"; I thereupon called to my wife to "get the police, it's Daniel"; Daniel yelled to Jerry "grab her"; Jerry shoved my wife into a chair and told her "don't move, or you'll get hurt";

Meanwhile the defendant had me pinned against the sofa and was squeezing; the pressure was painful; the defendant's brother Jerry said: "careful, you will kill him"; I

am a shopkeeper of age in excess of 50 years and no physical match for the defendant or any one of his brothers;

Thereupon Daniel yelled "Gaard, go upstairs and get the kids", whereupon the defendant's brother went, got the two children of Daniel and Pamela Willmore, and took them downstairs to a truck and drove off; thereupon Daniel Willmore and Jerry Willmore left the premises and drove off in an automobile;

Shortly thereafter, my stepdaughter returned home; we have had no word of the whereabouts or condition of the children since the events above related.

/s/ WILLIAM SHANEYFELT

Subscribed and sworn to before me
this 2nd day of June, 1965.

/s/ RAYMOND C. PLOETZ
Notary Public

My commission expires April 27, 1968.

APPENDIX E

State of Minnesota, County of Hennepin
District Court, Fourth Judicial District

Pamela H. Willmore, *Plaintiff*,

v.

Daniel E. Willmore, *Defendant*.

AFFIDAVIT

File No. 612151

State of Minnesota

ss.

County of Hennepin

HERSCHEL L. PERLMAN, M.D., being first duly sworn, deposes and says that he is, and at all times herein mentioned was, a duly qualified, licensed, and practicing physician with offices at 5407 Excelsior Boulevard, St. Louis Park, Minnesota; on December 22, 1964, William Shaneyfelt was seen by Dr. Nauth of your affiant's office; at that time, the patient complained of chest pains and gave as the history that the evening before his wife's oldest daughter's husband, and the daughter's husband's brothers had forced their way into the patient's home and the husband had thrown the patient to the floor who then straddled him and sat in his back; on examination, moderate tenderness on palpation over the fourth and fifth ribs on each side was found; the breath sounds were clear and X-

rays were taken which showed no fracture; treatment consisted of elastic bandage applied around the ribs.

/s/ DOCTOR HERSCHEL L. PERLMAN

Subscribed and sworn to before me
this 4th day of November, 1965.

/s/ RAYMOND C. PLOETZ
Notary Public

My commission expires April 27, 1968.

APPENDIX F

State of Minnesota, County of Hennepin
District Court, Fourth Judicial District

Pamela H. Willmore, *Plaintiff,*

v.

Daniel E. Willmore, *Defendant.*

AFFIDAVIT

File No. 612151

State of Minnesota

ss.

County of Hennepin

IRA C. PETERSON, JR., being duly sworn states that he is one of the attorneys for the defendant in the above entitled action. That September 28, 1965, in a telephone conversation with Jerold Willmore, said Jerold Willmore stated to your affiant that the defendant would submit an affidavit stating that when the defendant left this state with the children of the parties, he went to Milwaukee, Wisconsin, taking the children with him and that within a few days thereafter he took said children to Pocatello, Idaho. That said children remained there with the defendant at Pocatello, Idaho, and that their domicile was with the defendant in Pocatello, Idaho, until at least July, 1965. That at no time after the defendant left this state with said children was their domicile in the State of Minnesota. That the defendant has personal knowledge of these facts and

will submit an affidavit setting forth these facts. That in addition thereto, defendant will submit the affidavits of his two brothers, Jerold Willmore and Gaard Willmore, in support of said facts.

/s/ IRA C. PETERSON, JR.
Ira C. Peterson, Jr.

Subscribed and sworn to before me
this 29th day of September, 1965.

/s/ THEODORE N. TREAT, JR.
(Seal)
Notary Public

My commission expires March 16, 1971.

APPENDIX G

State of Minnesota, County of Hennepin
District Court, Fourth Judicial District

Pamela H. Willmore, *Plaintiff*,

v.

Daniel E. Willmore, *Defendant*.

AFFIDAVIT

File No. 612151

State of Minnesota

ss.

County of Hennepin

PAMELA H. WILLMORE, the plaintiff herein, being first duly sworn deposes and says as she has heretofore done in her Affidavit of June 2, 1965, and further that she regrets the necessity of this Affidavit and the necessity of disclosing the personal affairs, business affairs, and family affairs, of the defendant and those about him, but that she believes the continued custody of the minor children herein by the defendant, or his family, is intolerable, unconscionable, and * * * dangerous; * * * monthly statements of Northwestern Bell Telephone Company for plaintiff's long-distance telephone calls in an attempt to locate the children, several of such calls showing to have been placed through to defendant's brothers, which statements are attached hereto as Exhibit A;

2. That the defendant's mental balance, lack of mor-

als, and sadistic tendencies made it necessary for plaintiff and the children to flee for their own mental and physical safety; and that those same characteristics and similar characteristics in the persons about defendant make it dangerous, intolerable, and unconscionable for the children to be in their continued custody; that some of the incidents displaying these conditions are listed herein, and, in considering these incidents, your affiant suggests further consideration of the fact that during the relevant times plaintiff was 5 feet two inches tall and 110 pounds in weight, 27 years of age whereas defendant was 180 pounds in weight, 5 feet 10 inches tall and 32 years of age; and Kevin, son of plaintiff and her former husband, was aged four or five years:

a. During parties' marriage, defendant told plaintiff that he had been employed as a teacher at Brigham Young University, defendant being a Mormon, and that he there got one of his students pregnant and was discharged; * * *

c. During parties' marriage, defendant admitted to plaintiff that he had made sexual advances on two occasions to a young house guest in the parties' own home and shortly after parties' marriage; * * *

f. Defendant, in complete seriousness, made the statement that "he would have liked to have helped put six million Jews to death, everybody would."

g. Defendant's brother, Gerold, at one time, and simultaneously, had drivers licenses from Washington, D.C., Virginia, and Maryland, and because of driving offences successively lost each license; he thereupon requested defendant for the loan of defendant's drivers license which defendant granted permitting him to use the same for sev-

eral months over plaintiff's protest of the illegality of the act, its foolishness, and the unfairness of Gerold in requesting the same; whereupon defendant told her "Listen you rotten, filthy, bitch, keep your nose out of our family's business. I don't always do what the law says."; defendant then went into plaintiff's son Kevin's room and beat him leaving many bruises allegedly for his not doing a good enough job straightening out the shelves in his room; at the time plaintiff left Washington, Gerold was still using defendant's drivers license; * * *

i. On one occasion, plaintiff could no longer tolerate the ranting and raving of defendant, was going to take Kevin to stay over night at her brother's home; * * * that as she prepared to leave defendant got extremely agitated, red in the face, threatened plaintiff and wept tears; because the child Ellis was crying, however, plaintiff did not leave;

j. On one occasion, after defendant had sat in his room, depressed, sobbing, and weeping for ten days, affiant coaxed him through breakfast, coaxed him into dressing, coaxed him to the door to teach his class at the Federal Aviation Administration; he went out, but immediately came back in sobbing and weeping tears, and went to his room;

k. On one occasion, after affiant had threatened to leave defendant because of his conduct, defendant called her attention to an incident in London wherein a father had taken his infant child and had either jumped, or had threatened to jump from a bridge and asked "How would you like me to do something like that?"; your affiant is fearful of such an incident knowing full well from her ex-

perience with the defendant that he is capable of such an act, or worse;

1. Defendant exhibited a pathological joy in discipline and, at least for others, the Spartan life:

(1) Defendant would spank plaintiff's son Kevin with such vigor as to leave bruises which would persist for several days; reproached by plaintiff for this, defendant explained that the important consideration was not to bruise twice in the same spot or to hit over the kidneys, and that his mother had taught him this;

(2) That he preferred to administer the spankings upon the bare buttocks, and in one case defendant's young nephew, came into parties' home screaming with fear after having observed such a spanking administered to plaintiff's son Kevin;

(3) Defendant would spank Kevin as many as five or six times per day;

(4) Defendant would punish Kevin by taking his toys away for extended periods of time;

(5) In one incident as proudly related by defendant to plaintiff, which occurred when Kevin was three years of age, defendant took Kevin to a store to buy a space ship toy that the boy had many times said he had wanted; defendant left the boy outside the store, went in and purchased it; he placed it in a bag and took the bag out to the boy instructing him strictly to not look into the sack; he then went into the store, lurked there and watched the boy; when the boy finally did peek into the bag, the defendant descended upon him, marched him home, and made him throw the toy in the trash can;

(6) Plaintiff and her family have habitually called plaintiff's brother "Kicker" and Kevin, while three years of age, at the table called his uncle "Kicker" and Daniel sent the child from the table ten times at one sitting, for calling his uncle "Kicker";

(7) Defendant taught plaintiff's son Kevin to punish his teddy bear telling him "The first time he does something naughty he gets a talking to, the next time he gets set up on the bed, and the next time he gets a spanking", and, to plaintiff's horror she has seen her son Kevin reenact the lesson many times;

(8) Defendant would become very angry with Kevin for his scribbling in the color book (coloring outside the lines) and would take away the coloring book for this violation;

(9) On one occasion defendant struck plaintiff in the face with his fist with such force as to leave a bruise extending from her temple to her jaw;

(10) Upon affiant's psychiatrist's instruction to avoid arguments by turning her back and leaving the room, defendant subjected plaintiff to a running battle which lasted for seven hours during which defendant persistently followed plaintiff from one room to another arguing all the time; * * *

(11) On one occasion during an argument with plaintiff, defendant took her son Kevin from the house, hid him in the car, removing the car to some other location and refused for an extended period of time to tell plaintiff of the whereabouts of her son and leaving the small child unsupervised and alone in the car during this period of time;

(12) Defendant enforced adult disciplinary standards upon Kevin which standards defendant did not abide himself; plaintiff discovered a broken handle to Kevin's toy garden rake and cautioned the boy to take care of his toys and then dismissed the incident; a few days later, Kevin, running in full flight, and screaming desperately, came up the stairs with defendant running behind him brandishing the handle of the broken rake as a club; plaintiff intervening and defendant admitted that the boy had told him that the incident had been discussed and dismissed with him;

(13) Defendant insisted that Kevin sleep upon a canvas camp cot claiming that the Navajo Indians, who had straight backs, slept upon such a cot; plaintiff did not feel it healthful for Kevin and when plaintiff's brother's bed was available, moved Kevin to it; defendant made an immediate scene, and was going to move the child back to the cot that night; dissuaded by plaintiff, defendant instead took the child aside the next morning and told him "Mother doesn't want you to grow up to be a big, strong man."

* * * * *

(15) Kevin, and parties' son Ellis, would exhibit terror at the conflicts and at seeing plaintiff pushed around by defendant; this was discussed with Dr. Winer by both parties and they were cautioned against such conflicts in the presence of the children and plaintiff requested defendant that their discussions be in private; defendant refused to do this, and, on one case when Kevin protested about the conflicts, defendant told Kevin, "If Mommy would do what she

is supposed to do, there would be no trouble;" in these conflicts, defendant would push plaintiff around, strike her, grapple her, with such force as to leave bruises which were painful for several days;

(16) On one occasion, plaintiff took parties' child Ellis to the doctor after he had been injured in a fall; she left her son Kevin and their son Chris in the custody of defendant who protested that he preferred to take the child to the doctor; plaintiff left in one car and after a while discovered that she was being followed by defendant, alone, in another car; defendant got plaintiff to stop, got her out of the car, and manhandled her upon the street; all during this time, the two infant children were home, alone, and unguarded; * * *

n. Although defendant was employed during parties' marriage as a teacher by the U. S. Department of Justice, Internal Revenue Service, and the Federal Aviation Administration, and, in 1964, earned five $1,000.00 fees, 3 fees of $900.00 or more, one fee of $800.00 and two fees of $600.00 or more, all for short, part time, lecture courses, parties lived in poverty, and defendant subjected them and their children to as miserly demands as follows:

(1) He refused to permit the purchase of a raincoat or new shoes for Kevin;

(2) He refused to permit examination of Kevin's eyes even though the child was suffering headaches and was beginning to read; he explained that he was competent to check the boy's eyes and that he himself had checked them;

(3) He threatened to beat plaintiff if she went shopping;

(4) He refused to call the roach exterminator or talk to the landlady about the roach problem which was severe and for which plaintiff was reluctant to use poisonous baits because of the small children;

* * *

8. Plaintiff at no time insisted on signing of any agreement or stipulation for divorce nor did she threaten to call the police if the defendant came to Minnesota; prior to her flight with the children from Washington, D.C., plaintiff told the defendant that she would call the police if he ever again physically attacked her or her son, Kevin;

9. Immediately upon deplaning after plaintiff fled with the children to Minnesota, plaintiff phoned defendant to advise him of her whereabouts and that of the children; plaintiff asked that the defendant send the children's clothes and defendant said he wouldn't do a "God-damned thing" and that plaintiff had "better get the hell back here." Plaintiff said that she would do no such thing until the problem had been resolved and that included some discussion of visitation of the children; also prior to the defendant's act of December 1964, defendant called plaintiff and called her and her mother "filthy, little bitches" and suggested as reconciliation that the defendant and the plaintiff live in separate halves of a duplex, he paying the rent and she working to provide food and clothing for herself and the children; this was totally unacceptable because it did not avoid the reasons for her flight, did not protect her or the children physically from the defendant, and in fact ex-

posed the children alone, because of defendant's convenient work schedule, while the plaintiff would be at work; * * *.

/s/ PAMELA H. WILLMORE

Subscribed and sworn to before me
this sixth day of November, 1965.

/s/ RAYMOND C. PLOETZ
Notary Public

My commission expires April 27, 1968.

Exhibit A

CALLS AND TELEGRAMS

*Customer dialed call
Connect Time
A.M. 0000-1159
P.M. 1200-2359

	DATE	PLACE CALLED		AREA	TELEPHONE NUMBER	* CONNECT TIME	AMOUNT EXCLUDING TAXES
	104	WASHINGTON	DC	202	NA8 3371		265
1.	105	*MANASSAS	VA	703	EM8 3337	1301	150
2.	105	*WASHINGTON	DC	202	DU8 6694	1256	150
3.	105	*BETHESDA	MD	202	OL2 8913	2109	255
3.	105	*BETHESDA	MD	202	OL2 8913	1844	120
	105						495
4.	118	*WASHINGTON	DC	202	AD4 5600	1319	470
		US TAX		191	TOTAL		1005

CALLS AND TELEGRAMS

*Customer dialed call
Connect Time
A.M. 0000-1159
P.M. 1200-2359

	DATE	PLACE CALLED		AREA	TELEPHONE NUMBER	* CONNECT TIME	AMOUNT EXCLUDING TAXES
	125	*WASHINGTON	DC	202	DE2 4172	2208	115
5.	201	*POCATELLO	IDAH	208	232 6620	1007	155
5.	201	*POCATELLO	IDAH	208	233 4718	1005	155
	213	WASHINGTON	DC	202	DE2 4172		285
	220	*WASHINGTON	DC	202	LI4 4835	2114	495
	220	*WASHINGTON	DC	202	LI6 7735	2145	75
5.	220	*POCATELLO	IDAH	208	233 5949	2157	275
5.	220	*POCATELLO	IDAH	208	233 4718	2154	175
	TAX-US	163			TOTAL		1630

CALLS AND TELEGRAMS

*Customer dialed call
Connect Time
A.M. 0000-1159
P.M. 1200-2359

	DATE	PLACE CALLED		AREA	TELEPHONE NUMBER	* CONNECT TIME	AMOUNT EXCLUDING TAXES
6.	228	*WASHINGTON	DC	202	LI6 5638	2047	335
2.	301	*WASHINGTON	DC	202	DU8 6693	1034	150
6.	303	*WASHINGTON	DC	202	LI6 5638	2005	535
	[redacted]						
	316					2127	275
	321						245
	TAX-US	187			TOTAL		1871

Exhibit A (continued)

CALLS AND TELEGRAMS

*Customer dialed call
Connect Time
A.M. 0000-1159
P.M. 1200-2359

DATE	PLACE CALLED	AREA	TELEPHONE NUMBER	* CONNECT TIME	AMOUNT EXCLUDING TAXES
429					225
430					185
503					405
[redacted]					
514	*WASHINGTON DC	202	DE2 4172	1729	785
520	*WASHINGTON DC	202	RE7 4142	1437	145
7. 520	WASH DC	COL	388 6694		1745
[redacted]					
TAX-US	475		TOTAL		4749

(Calls which have been cut out are calls made by plaintiff's step-father in his business, and it is imprudent to let these telephone numbers fall into the hands of this defendant.)

1. Gerald Willmore home
2. Gerald Willmore office
3. Parties' Landlord
4. Defendant's Moving Company
5. Gaard Willmore, home and office
6. Mutual Family Friend
7. Return of call, collect by Gerald Willmore